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March 25, 2005

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 34667, BNSF Railway Company – Acquisition and Operation – State of South Dakota

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Reply to Comments and Request for Conditions. The text of the pleading is contained in the enclosed disk.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

Adrian L. Steel, Jr.

Enclosures

cc: The Hon. M. Michael Rounds
The Hon. Dennis Landguth
Mr. Gary Hanson
Mr. Mark F. Wandro
The Hon. Thomas Vilsack
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213623

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34667

BNSF RAILWAY COMPANY – ACQUISITION AND OPERATION – STATE OF SOUTH DAKOTA

BNSF REPLY TO COMMENTS AND REQUEST FOR CONDITIONS

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Dated: March 25, 2005

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SURFACE TRANSPORTATION BOARD

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BNSF RAILWAY COMPANY – ACQUISITION AND OPERATION –
STATE OF SOUTH DAKOTA

BNSF REPLY TO COMMENTS AND REQUEST FOR CONDITIONS

BNSF Railway Company ("BNSF") hereby files this Reply to the Comments and Request for Conditions ("Comments") filed by the State of South Dakota ("State" or "South Dakota") in this proceeding.[1] In its Comments, the State asserts that, while it purportedly does not oppose the regulatory approval of BNSF's acquisition of the Core Lines, the acquisition will allegedly leave it with a network of isolated State-owned rail lines and shortline carriers completely subject for the first time to BNSF pricing and service policies.[2] In turn, the State claims that the resulting isolation of the State-owned line segments would cut off market access

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[1] In addition to the verified statements submitted by the State in its Comments, a number of other comments in the form of letters or other correspondence have been submitted to the Board. To the extent those comments differ materially from the State's Comments, BNSF addresses those comments in this Reply and in the Reply Verified Statement of Christopher M. Randall ("Reply V.S. Randall") attached hereto.

[2] It should be noted as a factual matter that, even if the State were correct in this contention, BNSF's acquisition of the Core Lines will not contravene the parties' intent when they executed the Operating Agreement. The non-Core lines were originally established as "local option" lines which the State would own but not operate. This would allow Regional Railroad Authorities pursuant to state statute to re-establish operations if there was local interest in so doing. There were no provisions in the Operating Agreement or any of the other relevant agreements that provided for potential operators of these local lines to access carriers other than BNSF. The overriding interest was to re-institute rail service to reach BNSF. *See* Reply V.S. Randall at 4-5.

and threaten the existence of those lines and the smaller elevators and grain shippers they serve. Comments at 1.

The principal thrust of the State's argument is that, absent action by the Surface Transportation Board ("STB" or "Board") to intervene and reform the purchase option provisions under the BNSF/State Operating Agreement, the State will lose the ability to grant trackage rights over the Core Lines, and Dakota, Minnesota & Eastern Railroad Corp. ("DM&E") will lose the ability to interchange with the State's operator (the Dakota, Missouri Valley & Western Railroad, Inc. ("DMV&W")) at Aberdeen, SD. The State's fears and allegations lack foundation, and its requested "remedial" conditions which enhance the State's contract position should not be granted. This agency should not entertain the State's efforts to have the Board intervene and renegotiate the terms of the parties' private contract and amendments which have been in place since 1986 and 1991 respectively, and further interfere with contract interpretation issues now properly within the province of federal and state courts in South Dakota.

Allegations of isolation or "disaggregation" of State-owned line segments as a result of this transaction are misguided. All State-owned line segments tributary to the Core system have since the inception of BNSF's operation of the Core had market access to BNSF's system and will continue to have that same access once BNSF acquires full title to the Core Lines. Further, notwithstanding the State's recent efforts to obtain extracontractual rights to have third parties provide rail freight service via the Core, since inception of BNSF's operation of the Core, the State-owned line segments and the DM&E lines tributary to the Core have never had access to any carrier on the Core other than BNSF (with certain limited exceptions which will remain in effect following the acquisition). *See* Reply V.S. Randall at 5.

Similarly, fears of reduced market access lack foundation. Shippers today who rely on access to the Core Lines directly or indirectly will continue to be served by BNSF – consistent with the historical experience on those lines since BNSF began to operate the Core. They will have the same routing, interchange and market access opportunities that they enjoy today and have had since the 1980's, and the acquisition will not cause those to change nor will there be any rate, service or operations changes resulting from the transaction. Expanding market access above and beyond these shippers' historic experience may have its surface appeal, but, on careful reflection, the Board should resist the temptation for the following reasons:

- the result is a form of competitive access (contrary to the State's defensive protestations otherwise) without the proper showing of anticompetitive conduct on BNSF's part and contrary to federal and regulatory precedent;

- the remedy does not address a harm directly resulting from the transaction, since the proposed transaction does not change prior market access;

- such a remedy discourages market risk-taking and investment in public-private partnerships where the rules of the game (*i.e.*, the contract rights and obligations) are arbitrarily changed pursuant to regulatory fiat after being in place for nearly 20 years;

- contrary to sound public policy, such a remedy rewards other railroads and shippers who have not invested in market access or the physical upgrading of the Core infrastructure to the disadvantage of BNSF and its Core shipper investors;

- such a remedy will discourage further substantial investment in the Core franchise, which investments to date have completely revitalized the economic benefits of efficient rail transportation in eastern and central South Dakota; and

- the result would alter contractual rights of various parties and interfere with adjudicative processes already underway in the South Dakota courts.

Finally, BNSF's purchase of the Core Lines will serve the public interest by subjecting the Lines to full common carrier status and by ensuring that BNSF has the incentive to continue to invest in and upgrade the Core Lines so that the remarkable over seven-fold growth in traffic that has occurred over the past quarter century can continue. In addition, the concerns expressed by the State and others about BNSF's 110-car grain "shuttle" train policy and other rate and service practices are not properly considered in this proceeding. That policy and those practices are in place today, and BNSF's acquisition of the Core Lines will not enhance BNSF's ability to continue them in effect.

ARGUMENT

A. Under the Applicable Legal Standards, the State's Request for Conditions Should Be Denied

The State has not taken issue in its Comments with BNSF's statement of the applicable legal standards as set forth at pages 5 to 9 of the Application. There, BNSF showed that there is a Congressionally-mandated presumption in favor of approval of Section 10901 transactions, and that it is only if the Board can affirmatively find that the approval of a transaction would be "inconsistent with the public convenience and necessity" that it may disapprove a transaction. Further, the State does not contest that the public convenience and necessity does not require Section 10901 applicants to increase the level of competition or that competitive remedies of the type sought by the State here (*i.e.*, trackage rights and forced interchange) cannot be imposed on a Section 10901 transaction unless adverse competitive harm will arise as the result of the transaction. The Board's concern "is with the competitive aspects flowing from the transaction itself." *Montana Rail Link, Inc. – Exemption, Acquisition And Operation – Certain Lines of Burlington Northern Railroad Co.*, ICC Finance Docket No. 31089 (served May 26, 1988) ("May 26, 1988 Decision") at 15. Further, the State does not contest that Interstate Commerce Commission ("ICC") and STB precedent establish that there is no cognizable loss of competition where the applicant had sole control of the lines involved prior to the transaction for which Section 10901 approval is sought.

Instead of challenging these legal standards, the State argues that BNSF's acquisition of the Core Lines will cause adverse competitive effects. It asserts that – as the owner of the Core Lines and under various provisions of the Operating Agreement – it has certain "forms of leverage and recourse" that it could seek to use to assure that rail service on the Core Lines is adequate and available for all shipping constituencies in the State and that BNSF's acquisition of the Core Lines will deprive the State of this "leverage and recourse". Specifically, the State contends that the Operating Agreement creates significant "interplay" between the parties with respect to the functioning of the Core Lines. The State asserts that it continues to be responsible for the management and administration of the Lines and has the right to admit third-party carriers onto the Lines (subject to BNSF's consent with respect to any material interference with BNSF's operations). It also argues that BNSF is required to provide service at levels, frequencies and rates on an equivalent basis of that provided elsewhere, to provide service in an efficient manner, and to maintain the Core Lines to a minimum of FRA 2 standards. Finally, it asserts that BNSF is not permitted to abandon any of the Core Lines and that the State retains control over important leases.

However, the facts belie the State's argument that its claimed "leverage and recourse" provide it with any ability to compel or force the access it seeks. First, to the extent the State's alleged right to grant trackage rights on the Core Lines forms a basis for the claimed "leverage and recourse", the state court will definitively resolve that issue – either the State will be able to grant trackage rights or it will not. In other words, its perceived ability to game the contract provisions will come to an end. That matter, however, is at the center of current litigation before the South Dakota state court in Pierre, as acknowledged by the State in its filing. Thus, any alleged loss of any "leverage and recourse" remains to be seen and is ultimately a determination yet to be made by the state court – absent ill-advised intervention by this agency in that private contract dispute.[3] Second, the other cited bases for the State's purported "leverage and recourse" obviously do not as a practical matter provide the State with any ability to secure the relief it seeks – since, if they did, the State would have already exercised the "leverage and recourse" to obtain its desired relief. It has not done so simply because the Operating Agreement does not provide it with the leverage the State claims. Accordingly, there will be no loss of "leverage and recourse" attributable to the transaction which would justify the granting by the Board of trackage rights or forced access at Aberdeen.[4]

Finally, the State's requested conditions are unsupportable as outlined below:

1. The State's requested conditions impermissibly grant competitive access rights, contrary to applicable law.

Allegations that the State's requested conditions will not adversely affect BNSF are unsupportable and disingenuous. Indeed, it is clear from the State's Comments themselves that increased competition is one of the State's principal goals. Thus, on page 21, the State asserts that one of the reasons it seeks interchange rights for DM&E at Aberdeen is to ensure adequate "rate, service and market access options" for shippers on State-owned lines. BNSF currently provides rail service (via truck connections) to various grain producers on those lines, and the State's requested condition would clearly provide those producers with additional transportation

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[3] It is notable, however, that, in the history of the contract relationship between BNSF and the State, arrangements with third parties for trackage rights over the Core Lines, such as the D&I, have been solely creatures of contract between BNSF and those third parties. *See* Reply V.S. Randall at 8. Moreover, the Operating Agreement provides that BNSF is completely responsible for all rail freight service matters on the Core. *See* Article 3, Sections A and B.

[4] In addition, the State's argument fails to acknowledge that all of the "leverage and recourse" which it cites is, and has been since 1986, subject to BNSF's option to purchase. Indeed, even after the option to purchase was agreed to and included in 1986 in the Operating Agreement, the State could still have avoided eventual BNSF ownership of the Lines and retained its purported "leverage and recourse" through the 5 and 10 year cancellation rights that both parties had in the 1986 Agreement. However, those cancellation rights were eliminated in 1991.

options. Similarly, the State's reasons for its other requested conditions include providing "rate and service options" and "access to rail markets via other carriers at the Sioux City, Iowa gateway" (page 23), "transportation options" and the ability "to reach connections with other carriers at the Sioux City gateway" (page 25), and "market access availability" (page 26).[5]

However, the Board's "competitive access" regulations at 49 C.F.R. Part 1144 do not permit the type of forced access which the State seeks here. Under those regulations as applied in *Midtec Paper Corp. v. Chicago and N.W. Transp. Co*, 3 I.C.C. 171 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988), and its progeny, a party must show that forced access is necessary to remedy or prevent "anticompetitive" conduct before the STB will exercise its authority. The STB has made clear that only very poor service, excessive prices, the foreclosure of efficient routings, or some other concrete evidence of anticompetitive or abusive conduct will justify the imposition of a remedy. The State has made no such showing here, and the competitive access relief that it seeks cannot be awarded. *See, e.g., San Jacinto Rail Ltd. Construction Exemption and Burlington N. & S.F. Operation Exemption*, STB Finance Docket No. 34079 (served May 9, 2003), at 12-13 and n. 35 (absent demonstration of anticompetitive conduct under *Midtec*, Board may not impose involuntary trackage rights).

[5] The State's request that DM&E be granted trackage rights on the Core Lines from Wolsey to Sioux City is a clear example of the State's efforts to increase competition. As the State acknowledges, DM&E already has a joint-line routing to Union Pacific connections at Omaha via Mason City, IA, but it considers that routing to be at a competitive disadvantage to BNSF because of circuity. The State is thus seeking compelled access for DM&E to BNSF's route.

2. **The State's requested conditions, which threaten the successful future of the Core and similar public/private rail investment initiatives, are contrary to the public interest.**

The granting of trackage rights and forced interchange would dilute traffic on the Core Lines and weaken the economic foundation that BNSF and South Dakota shippers have built. Long-term economic viability for the Core Lines without continual public investment to maintain service was the focus of the State's purchase of the Lines and of its investments in rehabilitation, as well as the evolution of BN and BNSF rail service on the Core. This viability was to be achieved through modernization of the physical plant, access to broader markets accessible through the BN network, access to modern grain hauling equipment, and development of efficient grain handling facilities through railroad (locomotives, cars, track, etc.) and shipper (efficient, modern grain handling facilities) investment. As set forth in the Application, the success achieved has been outstanding – with an over seven-fold increase in traffic from less than 6000 carloads in 1981 to 43,000 carloads in 2004, not including volume increases attributable to the marked increase in individual car carrying capacity over the past quarter century. It is an absolute necessity that investment by BNSF and South Dakota shippers be continued, but the State's requested conditions would deprive BNSF of the traffic and revenue needed to sustain continued substantial investment.[6] If the Core franchise which BNSF and its

[6] Since 1987, all investments on the Core system (estimated at over $60 million) have been solely funded by BNSF. *See* Reply V.S. Randall at 4. Moreover, any rehabilitation investments the State made prior to that date are to be fully refunded by BNSF upon consummation of the sale of the Core system pursuant to the terms of the parties' contract. The State and many commenters have criticized the success of shuttle train facility investments on the Core, but none can deny that those highly efficient unit train operations have transformed local economies which were on the brink of disaster when two-thirds of the State's rail infrastructure sat idle. Inefficient investments were no doubt a contributing factor in the demise of the Milwaukee Road system, and ultimately the recipe for efficient investment must include shuttle train operations. While that recipe may not be preferred by some who would return to a bygone era (or those who chose not to invest in modernized infrastructure), that cannot negate the unmistakable fact that those operations have benefited South Dakota's shippers and communities as manifested in the remarkable history of the Core.

shipper investors have enjoyed for over 20 years is opened to other railroads (regardless of the extent of that access), there is no doubt that the justification for BNSF's continued investment in South Dakota's infrastructure will be undermined. That uncertainty for BNSF, its stakeholders, and the marketplace is contrary to the public interest, where stability of markets depends on certainty. Finally, the addition of other carriers to the Core system may also threaten operating fluidity with the introduction of a hodgepodge of shortlines with trackage rights operations on Core trackage which is "dark territory" (*i.e.*, not equipped with automatic signaling) and endowed with few sidings for meeting and passing of trains. *See* Reply V.S. Randall at 9.

In addition, it would be against the public interest for commitments made for public-private initiatives for large infrastructure projects requiring millions of dollars in investments to be dishonored. If that were to occur, similar projects, as have occurred elsewhere in other states and with other rail carriers, which would benefit shippers could not be supported by investing railroads with scarce capital resources. Moreover, investment by rail shippers in grain and other handling facilities along the Core Lines would be in jeopardy without assurance of long-term access to stable rail service and continued access to present and future national and international markets.

B. Through its Requested Conditions, the State Seeks to Rewrite the Operating Agreement and Other Controlling Agreements

1. Imposition of trackage rights interfere with the Operating Agreement between BNSF and the State and the state court's pending adjudicative process.

When recognized for what they are, the State's requested conditions essentially would rewrite the Operating Agreement as well as the other contractual agreements which govern the parties' relationships. As set forth in the Verified Statement of Christopher M. Randall ("V.S.

Randall")[7] submitted with the Application, the option to purchase was granted to BNSF in 1986 as a quid pro quo in return for BNSF's commitment to continue to invest in the Core Lines and to make substantial rent payments. V.S. Randall at 3-4. However, no mention is made in any of the three verified statements submitted by State of South Dakota officials concerning the option to purchase, and they do not contend that the option to purchase was not fully and fairly negotiated nor do they contend that the option was not a bargained-for part of the 1986 Operating Agreement. Nor has the State provided any justification or reason as to why it should not fulfill the bargain it freely made in return for the benefits it sought and has received.[8]

Further, the State has not submitted any testimony from any of the State's principal negotiators of the Operating Agreement or anyone else indicating that, in exercising its option to purchase, BNSF is doing anything other than what the parties expected and hoped in 1986 would happen when they agreed to the inclusion of the option in the Operating Agreement. As cited in BNSF's Application (at 14 n.16), Jim Myers' 1986 statements to the press confirm that the parties intended that the revised Operating Agreement would facilitate BNSF's purchase the Core Lines and that, once BNSF had paid off the government loans that were being used to repair the State-owned "mainline", it was the parties' intent that BNSF would then use the funds

[7] By letter dated March 9, 2005, George C. Nikolas protested BNSF's inclusion of Mr. Randall's Verified Statement in the Application on the grounds that Mr. Randall, as a result of his employment at the South Dakota Division of Railroads, had access to "insider information". However, prior to its submission of Mr. Randall's Verified Statement, BNSF had consulted with counsel for the State and was advised that the State would not object to Mr. Randall's testimony in the state court litigation except to the extent that he gained information covered by the attorney-client privilege or the deliberative process privilege. Mr. Randall was advised of this, and he prepared his Verified Statement and Reply Verified Statement in compliance with the State's position.

[8] In particular, BNSF's marketing and service programs, designed to be attractive to shippers and create and serve international markets, built business on the Core, not State programs. The State has benefited over the years through private investment in and along the Core attributable to BNSF's stewardship, as well as through taxes paid, the escalating rental payments BNSF has paid, and, finally, nearly a quarter century of service stability, none of which had occurred during the prior years under the ultimately failed management of the Milwaukee Road.

available to buy the Core System. The State has not contradicted Mr. Myers' statements, and they therefore should be taken to reflect the parties' intent.[9]

Nonetheless, the State argues that, as a condition of BNSF's exercise of the option to purchase, the Board should rewrite the terms of that provision to require BNSF to permit trackage rights on the Core Lines – apparently even if the state court determines that the State is not entitled to do so under the Operating Agreement. Such a result cannot be consistent with the public interest, where the certainty and sanctity of contract are substantially undermined and disregarded.

2. The State's requested conditions relating to the D&I interfere with the existing contract arrangements between BNSF and D&I.

As to D&I trackage rights, the terms and conditions on D&I's use of the Core Lines were established through mutual negotiations between the parties, and there is no basis for the Board to order that those terms and conditions be abrogated. BN operated the Sioux Valley lines until 1986 when D&I assumed operations pursuant to an agreement between BN and D&I and pursuant to a companion agreement between D&I, the State of South Dakota and the Sioux Valley Regional Railroad Authority. Reply V.S. Randall at 8. This agreement provides that "All general commodities (carload shipments) excluding all carloads of aggregate, Standard Commodity Code No. 14412, 14919, 14219 and 14413 originating and/or terminating on the Rail Facilities are to be delivered to/received from Burlington Northern Railroad Company…." *Ibid.* Thus, D&I and the State seek to break the terms of an arm's length agreement voluntarily negotiated and approved by the State, D&I and BN.

[9] Indeed, in 1991, the State's agreement to eliminate the parties' cancellation rights confirmed with finality BNSF's option to purchase.

3. The State's requested condition concerning forced access to BNSF's trackage at Aberdeen abrogates the terms of BNSF's agreement with DM&E and contravenes recent rulings of the federal district court in Aberdeen.

At the outset, it is clear why the State desires enhanced interchange access at Aberdeen, SD,[10] but it is manifestly unclear how that desire translates into a condition addressing alleged effects stemming from BNSF's proposed acquisition of the Core Lines. The State's claim for interchange access at Aberdeen results from a 2001 agreement between BNSF and the State in which BNSF agreed to donate the Aberdeen to Britton line (north of Aberdeen) to the State, and from the parties' longstanding dispute over the scope of rights granted in that agreement as well as rights BNSF granted to DM&E in a 1986 trackage rights agreement. The only apparent connection to rights along the Core Lines currently requested by the State is geographic proximity.

Thus, the proposed Aberdeen access, which is located on the former east-west Milwaukee Road mainline (not the Core Lines), is irrelevant to this proceeding. Nevertheless, BNSF is compelled to reply to the State's accusations concerning the matter. The State characterizes BNSF as having "blockaded" interchange access at Aberdeen, but BNSF sees it entirely differently. Rather, BNSF has insisted that the State and DM&E honor their commitments made to BNSF, and BNSF expects to likewise honor its commitments accordingly. Suffice it to say, the Board need not accept either party's rhetoric here concerning the scope of rights at Aberdeen, as the federal district court is laboring over that fairly complex issue at the current time. The

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10 Indeed, the State has coveted that right for some time, manifested by years of litigation between the State and BNSF in a case pending before the federal district court in Aberdeen. *See The Burlington Northern and Santa Fe Railway Corporation v. Dakota Missouri Valley and Western Railroad, Inc.*, CIV 03-1003, and *State of South Dakota, et. al v. Burlington Northern & Santa Fe Railway Company*, CIV 03-3012, D.S.D. (Northern Division). That case is currently set for trial on April 26, 2005 (*BNSF/DMVW*).

Board should not tread upon matters already soundly within the province of the federal district court, particularly where the federal court has already clearly addressed the question of the scope of DM&E's rights at Aberdeen. *See BNSF/DMVW*, 347 F. Supp.2d 708, 718 (D.S.D. 2004) ("It may be that the [South Dakota Railroad Authority] has the right to interchange with other carriers in Aberdeen but DME is permitted to interchange only with BNSF.") A final determination of the scope of interchange rights any other carriers and/or the State may have at Aberdeen is expected to be resolved at the upcoming trial.

Ultimately, abrogation of contracts and circumvention of adjudicative proceedings bring about uncertainty in the marketplace and should not be condoned here. That result flies in the face of longstanding Board and ICC precedent of maintaining neutrality with respect to private contract disputes.[11] Indeed, if the Board were to accept South Dakota's pleas here and rewrite the parties' contractual agreements, it could well open up contractual agreements in all future Section 10901 proceedings.

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[11] The State argues that "the presence or content of a private contractual agreement has little to do with the public interest analysis required by 49 U.S.C. § 10901(c)," Comments at 32, but <u>none</u> of the cases it cites stand for that proposition. *Missouri Pac. R. Co. Abandonment,* 324 I.C.C. 357 (1965), and *Burke County, Georgia v. United States,* 206 F.Supp. 586 (S.D. Ga. 1962), were <u>abandonment</u> cases holding that the Interstate Commerce Commission's authority to approve an abandonment under what is now 49 U.S.C. § 10903 could not be defeated by a private contract. *Chicago & N.W. Transp. Co. v. Peoria & Pekin U. Ry. Co.,* 360 I.C.C. 168 (1979), was a case involving an allegations that the contract at issue violated numerous provisions of the Interstate Commerce Act. None of these cases is remotely analogous to a case in which the owner of a rail line makes a contractual agreement to sell the line and then claims that the STB should use its regulatory authority under Section 10901(c) to alter the terms of its own agreement. The STB has always been loathe to interfere with contracts on regulatory grounds, especially when the request comes from one of the parties to the contract. *See, e.g., Township of Woodbridge, NJ v. Consolidated Rail Corp.,* STB Docket No. 42053 (served Dec. 1, 2000) (carrier cannot invoke regulatory preemption to avoid obligations under an agreement it entered into voluntarily). Under Section 10901(c), where the burden rests on the party seeking to interfere with a transaction to demonstrate that approval of the transaction is inconsistent with the public convenience and necessity, the State has pointed to no authority that could conceivably justify the STB rewriting on regulatory grounds the State's own contract.

C. Concerns Over Pre-existing Rate and Service Conditions are not Properly the Subject of Resolution in this Section 10901 Proceeding

The complaints and concerns expressed by the State in its Comments and by the various parties filing comments or verified statements in support of the State pertain to circumstances unrelated to the proposed acquisition. For instance, the concerns expressed by the State and by a number of those who submitted comments or verified statements relating to BNSF's policy of facilitating and fostering investments in modernized grain car handling facilities (*i.e.*, 110-car elevators and "shuttle train" service) are unrelated to BNSF's proposed acquisition of the Core Lines.[12] BNSF has adopted those policies and partnered with its shippers to capture efficient market opportunities in response to international market conditions impacting the competitiveness of upper Midwest grains on world markets, and to take full advantage of the economies of scale offered by unit trains, high capacity cars, and rapid car loading and unloading facilitated by shipper investment in modern grain handling facilities. The commercial success of these policies is evidenced by the shipper investment in facilities to take advantage of this efficient marketing and effective operating model, and by the volumes of freight which have moved as a result. BNSF's acquisition of the Core Lines will not enhance or diminish BNSF's ability to implement those policies. BNSF already has sufficient ability to do so. If the State or others want to challenge the policies, this is not the proceeding where that can or should be done.

[12] The State also expressed an unfounded concern about BNSF's alleged refusal to accept "co-loaded" grain trains. That concern is also unrelated to BNSF's proposed acquisition, but it should be noted that the BNSF/DM&E co-loading project was a pilot program and is now complete. It was intended to assist DM&E shippers in Minnesota in testing BNSF shuttle economics and bridging them from smaller units to full shuttles. During this time, DM&E upgraded its line to handle 286K trains and, with BNSF, constructed a new, efficient interchange at Florence, MN. As was contemplated from the outset, the co-loading program was terminated upon completion of these steps. *See* Reply V.S. Randall at 6.

As the ICC directed in *MRL*, the proper vehicle to bring such a challenge is through a formal rate proceeding. May 26, 1988 Decision at 15.

D. BNSF's Acquisition of the Core Lines Serves the Public Convenience and Necessity

As shown in the Application, BNSF's purchase of the Core Lines will ensure that BNSF remains financially committed to providing high quality rail service to South Dakota and its rail shippers and markets pursuant to a full-fledged common carrier obligation over the long term. It will provide BNSF with the incentive to invest in and upgrade the Core Lines. For instance, with 15 years left on the Operating Agreement, BNSF faces investment decisions on assets that have useful lives well beyond the remaining term of the Agreement. These assets include both rail and ties which have useful lives of 30 years or more. Since ownership of these assets would revert to the State if BNSF were not to purchase the Core Lines, with no way for BNSF to recover that investment's remaining useful life at the conclusion of the term of the Operating Agreement, it is prudent for BNSF to proceed to exercise its purchase option to ensure needed long-term investment and upgrading can continue. Similarly, the opportunity to invest the funds that would otherwise be paid in rent into the Lines justifies exercising the option.

The important public interest considerations supporting BNSF's acquisition of the Core Lines have been recognized in letters to the Board (copies attached hereto) by a number of South Dakota shippers. For example, Douglas Brown of Dakota Plains Ag Center, LLC has written the Board:

> My company is very dependent upon our relationship with the BNSF as a supplier of freight for both shipping and receiving of grain and bulk fertilizer products. We have invested over $13.0 million in our facilities and plan to continue to invest even more, but it is imperative that we have access to quality rail service to support this investment. My greatest fear is that if the BNSF is not allowed to exercise their rights under a contractual agreement with the State of South Dakota, we will begin to see our services

> curtailed and upgrades eliminated. This will have a devastating effect on our business.
>
> We feel that the purchase of the Core Lines by the BNSF will allow continued upgrades of track and services that will allow us to continue to grow and expand; providing more jobs and greater economic growth for rural South Dakota.

Similarly, Dean Isaacson of Western Consolidated Cooperative writes:

> West Con is producer owned and will receive a projected 30 million bushels of grain in 2005 from our producers. We are responsible to find markets throughout the US and other areas of the world.
>
> To do this efficiently, we have had to build 2 – 110 car grain load out facilities and 1 – 65 car fertilizer receiving facility. This could not have happened without the support of the BNSF. Our producer's survival depends upon a reliable rail network in Minnesota and South Dakota and through the country for transportation of grain and fertilizer.
>
> BNSF's purchase will ensure BNSF will continue to be a key part of South Dakota's transportation network. Ownership of the Core lines will ensure BNSF has a continued investment incentive to grow the business on the Core. Healthy sustained investment for the long run is important to West Con because it adds value to the producers.

Further, Thomas J. Hammond of Columbia Grain International, Inc. states:

> BNSF's purchase will ensure BNSF will continue to be a key part of South Dakota's transportation network. Ownership of the Core lines will ensure BNSF has a continued investment incentive to grow the business on the Core. Healthy sustained investment for the long run is important to Columbia Grain because our business is very dependent on reliable rail service.

Likewise, John McEnroe of CHS Inc. has advised:

> CHS owns and operates grain facilities at Canton, Mitchell, and Worthing, South Dakota. All three [are] capable of loading or receiving BNSF shuttle trains. Over the past several years, CHS Inc. has invested several million dollars of capital at those three facilities in order to more efficiently handle and ship grain via BNSF. That investment was predicated on the transportation service package provided by BNSF as well as BNSF's market access capabilities, both to export and domestic grain markets.

> BNSF's purchase of this line segment will ensure CHS Inc. facilities will continue to have efficient and competitive access to those markets via a reliable source of transportation. Continued investment in infrastructure by BNSF is vital to the financial well being of the assets owned by CHS. Ownership of the Core lines encourages BNSF to further invest in the rail infrastructure and provide continued transportation services to a significant grain producing area of South Dakota.

Finally, Randal L. Linville of The Scoular Company has stated:

> The Scoular Company has a very substantial capital investment in a grain shuttle train loading facility on the Core Line at Alpena, South Dakota. This investment was made because the line provides The Scoular Company with *direct access* to every significant market for the grain products produced in South Dakota and marketed by our company, utilizing a business model that encourages and rewards efficient operational practices. It is our opinion that such practices are the key to the long term sustainability of an economic and effective rail transportation system, not only in South Dakota but in the entire United States.
>
> BNSF's purchase of the Core Line will ensure the continuation of the present direct access opportunity in South Dakota, and that BNSF will continue to be a key part of South Dakota's transportation network. In addition, ownership of the Core Line will ensure BNSF has a continued investment incentive to grow the business on the Core Line. Healthy sustained investment for the long run is important to The Scoular Company and its customers in order to allow continued timely and competitively priced rail transportation service for agricultural products originating in South Dakota.

As these shippers have recognized, it is critical to the continuing development and viability of high quality rail service to South Dakota shippers – including those located on the Core Lines as well as those located elsewhere in the State – that BNSF's acquisition of the Lines be approved and that its ability to maintain traffic volumes necessary to justify further investment be preserved.

CONCLUSION

In its Comments and Request for Conditions, the State does not take issue with the applicable legal standards nor with the substantial evidence submitted by BNSF that its acquisition of the Core Lines will be in the public convenience and necessity. Rather, the State seeks to escape its commitment to permit BNSF to purchase the Lines under the parties' Operating Agreement. While the State recognizes that the Board does not have the authority or jurisdiction to interpret or enforce the Operating Agreement or any of the other agreements governing the parties' relationships, the State nonetheless asks the Board to intervene and grant it the very same relief that would result if the Board had such authority or jurisdiction. Controlling Board precedent mandates that the State's request be denied, and BNSF therefore respectfully requests that the Board approve its Application and authorize it to acquire and continue to operate the Core Lines.

Respectfully submitted,

Adrian L. Steel, Jr.

Jeffrey R. Moreland
Richard E. Weicher
Sarah W. Bailiff
BNSF Railway Company
2500 Lou Menk Drive
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1909 K Street, NW
Washington, DC 20006-1101
(202) 263-3237

Attorneys for BNSF Railway Company

Dated: March 25, 2005

REPLY VERIFIED STATEMENT OF CHRISTOPHER M. RANDALL

My name is Christopher M. Randall. I am Director of Short Line Development at BNSF Railway Company ("BNSF"). I have previously submitted a Verified Statement as part of the Application filed in this proceeding. In my earlier statement, I described the relationship that BNSF has with the State of South Dakota with respect to the Core Lines, including BNSF's past and current operation of the Core Lines, the dire situation that existed in South Dakota in the early 1980's, the steps that BN and BNSF have undertaken over the past 23 years to provide South Dakota shippers with rail service, and BNSF's decision to exercise its purchase option under the Operating Agreement. My background and credentials are set forth in that earlier statement.

The purpose of this statement is to respond to several issues raised by the State of South Dakota and other parties in their Comments and Request for Conditions filed in this proceeding.

To accurately understand the issues being discussed in this proceeding and the agreements between BNSF and the State of South Dakota, it is critical to understand the rail transportation environment that existed in South Dakota at the time of the Milwaukee Road bankruptcy and at the time the agreements between BNSF and the State were reached. This was a period of great risk: risk for shippers who had lost critical rail service, risk for the State that saw a critical threat to its agricultural sector and its economy, risk to its communities that saw economic lifelines abandoned, and risk to rail companies considering restoring operations on abandoned lines.

In light of these risks, South Dakota took the unprecedented step of purchasing a significant network of rail lines and, with the help of BNSF, restoring service on the most important of those lines. Track that had deteriorated below safe operating standards was rehabilitated, and BNSF restored operations in 1981 pursuant to a five-year agreement that provided no operating subsidy but did require BNSF to treat South Dakota shippers similarly to shippers on BNSF lines in other locations. It was unknown to all parties whether this experimental arrangement would prove to be successful and whether traffic would grow sufficiently to allow operations to be self sustaining.

By 1986, traffic had grown sufficiently to convince BNSF that it was willing to enter into a new operating agreement. A glimmer of hope existed for both parties that not only could service be self sustaining, but also that operations might be sufficiently profitable to enable rent to be collected from BNSF and, further, that perhaps traffic on the lines would justify purchase by BNSF and a return of ownership to the private sector. This possibility was beyond hope in 1981, but the intervening years had demonstrated that the lines had economic potential that justified inclusion of a purchase option in the parties' 1986 agreement. This option (which remains in the parties' current agreement) was gladly given by South Dakota, since it was never a goal to be a long-term owner of rail lines, and there was a desire to recover the State's investments in the rail lines and make the funds available for other purposes.

We now stand on the threshold of realizing the once remote goal of returning to private ownership the most important of the network of once-abandoned Milwaukee Road rail lines. BNSF desires to exercise its purchase option and return to South Dakota its initial investment in the Core Lines. This transformation stands as confirmation that the State's original goals were well-founded—namely, that the lines had potential if they could be served by a railroad with access to key markets, the equipment required to meet the needs of shippers, marketing programs that allow shippers to compete, and service that is efficient. Every effort was made to closely link BNSF to the Core Lines in order to avoid a dilution of available traffic, which would allow others to enjoy benefits without accepting similar risk. South Dakota was keenly aware of the importance of the Core Lines to its economic future and was aware that its best opportunity for successfully returning the Core Lines to economic viability resided with BNSF, the carrier that offered all the elements needed to succeed, if success was possible.

The measure of success in this venture rests with the traffic volume. Shippers have determined that not only were the lines worth saving, but that BNSF was the right choice for existing operations and new shipper facilities on the Core, an extraordinary concept for the once abandoned lines traversing some fairly remote locations in the State. Growth of the traffic to over 40,000 carloads in 2004 alone provides ample evidence of economic viability and that an effective mix of service, equipment, marketing, investment and network access has been provided successfully by BNSF. Further, the many shuttle facilities that have been created in South Dakota stand as evidence of success and accomplishment. The ultimate beneficiaries of this success are South Dakota farmers who receive more for their crops and, in response, now produce vastly more grain than ever before. According to USDA statistics, corn production in South Dakota has increased from an annual average of 157 million bushels between 1980 and 1984 to an annual average of 414 million bushels between 2000 and 2004. Similarly, soybean production has increased from an average of 25 million bushels between 1980 and 1984 to an annual average of 136 million bushels between 2000 and 2004.

Turning to some of the items discussed by South Dakota and others in comments filed in this proceeding, the conditions requested by the State would undermine precisely what the efforts of the past 24 years have sought to accomplish. Granting the trackage rights and other access that has been requested by the State would dilute traffic on the Core Lines and disperse it to other carriers, which in turn would deplete returns on investment which have motivated historic traffic growth on the Core Lines. Moreover, those conditions would result in an unfair investment advantage to "free-riders" who would benefit from access to the Core franchise without having made corresponding investments in the Core system. That would result undermining the interests of those shipper investors who have invested in facilities, and weakening the economic foundation BNSF and its shippers have built.

South Dakota's rail system in 1980 was besieged by lack of investment and overcapacity. By consolidating available traffic and investment funds on a smaller network of lines, an attempt was made to salvage critically needed service on lines that would become economically self-sustaining after correcting conditions wrought by years of deferred maintenance. The requested conditions in this proceeding would divest BNSF of traffic and revenues tributary to the Core that are vitally needed to sustain and justify further investment. In this regard, since 1987, all investments on the Core system (estimated at over $60 million) have been solely funded by BNSF. Additionally, those conditions threaten to create new operating challenges with the proposed introduction of a hodgepodge of shortlines with various trackage rights operations. To suggest this is not an effort to grant other carriers competitive access or otherwise effect changes in rate and service practices is untrue.

BNSF's acquisition certainly would not result in isolating shippers or rail lines in South Dakota. Isolation did occur following the Milwaukee Road abandonment, and the Core Lines were created in response. The non-Core Lines were originally established as "local option" lines which the State would own but not operate. This would allow Regional Railroad Authorities pursuant to state statute to re-establish operations if there was local interest in so doing. There were no provisions in the Operating Agreement or any of the other relevant agreements that provided for potential operators of these local lines to access carriers other than BNSF. The overriding interest was to re-institute rail service to reach BNSF.

BNSF's acquisition of full title to the lines it operates will result in continued BNSF service, unchanged. The Core Lines enjoy efficient connections with BNSF at these locations: Aberdeen and Sioux Falls, SD and Sioux City, IA, a fact that demonstrates not only that BNSF was the logical choice to operate the Core Lines, but also that the Core is a network that has become -- and should remain -- an integrated, not an isolated, part of BNSF. Other State-owned lines that connect to the Core will remain in exactly the same status since abandonment by Milwaukee Road and reactivation of the Core Lines by BNSF.

Successful traffic growth on the Core Lines was the result of many factors, the most notable of which is the advent of the shuttle train program and development of facilities able to ship shuttle trains. Although relatively few in number, these facilities handle significant volumes of grain and have a large, positive economic impact (*e.g.*, favorable impacts on grain prices, service, local tax income, and employment in largely rural areas) in their market territory. Agriculture and transportation are on a constant search for improved economies of scale, and shuttles are one of the latest significant examples. Shuttles have been developed by shippers and the market place in response to economic opportunities. They are not BNSF mandates as the State and other commenters would suggest, but marketplace mandates.

It is not appropriate to evaluate the Core Lines by the number of shippers it enjoys but rather by the volume of traffic produced. Agriculture and transportation long ago relegated single car elevators to roles as niche players, and willfully ignoring that fact dangerously discounts the realities of the marketplace today and tomorrow. Large-scale co-loading programs are similarly unrealistic and undermine the investments made by other shippers who have made substantial investments in more efficient unit train facilities. Most importantly, efficient grain handling and transportation benefit farmers, our ultimate customers.

While it is true that shuttles accept truck delivery of vast quantities of grain, these trucks are providing relatively short haul service rather than moving grain outside South Dakota borders, as would happen if the Core Lines were not competitive with facilities in neighboring states. Absent a withdrawal of shuttle operations from South Dakota, which would be a serious setback for local economies, truck traffic volumes should not be affected by BNSF acquisition of the Core Lines.

To clarify an allegation made by South Dakota and other commenters, BNSF has not and will not refuse to accept interchange traffic from connecting carriers. We have discretion on price, service, and routing of traffic, but we will not refuse to accept it in violation of applicable laws and regulations. We have not "refused" to accept co-loaded trains from the DM&E as DM&E has boldly asserted, and we are unaware of any circumstances similar to what DM&E has suggested. BNSF and DM&E entered into a pilot program to test and develop shuttle elevators on the DM&E in western Minnesota, and we worked with DM&E to develop new interchange for that traffic at Florence, MN. Following development of the grain facilities, including completion of shuttle facility investments by the relevant stakeholders, DM&E's upgrading of its line to handle 286K trains, and the opening of the interchange, the interim co-loading program that had been used to test and develop the shuttle was discontinued. Such a program is not appropriate in South Dakota because existing shuttle facilities served directly by

BNSF already exist, and it is BNSF's policy not to undermine and disadvantage shuttle facilities who have made substantial investments to achieve competitive advantage.

In addition to the foregoing, DM&E's representative inaccurately claims that BNSF refused to accept a proposed new movement in interchange at Aberdeen, SD. DM&E contacted me about a potential movement from its line to the former BNSF Britton line and inquired whether BNSF would handle the traffic. I responded that under the terms of our trackage rights agreement with DM&E such a movement could not occur without amendments. We offered to amend the agreements with DM&E to permit the proposed traffic movement, but DM&E declined BNSF's offer.

Various comments regarding the Aberdeen interchange also need to be clarified. Most importantly, the future of the Aberdeen interchange between the State's operator of the former BNSF Britton line and the DM&E will be unaffected by BNSF's acquisition of the Core Lines. There is litigation pending regarding interchange provisions of the donation agreement between BNSF and the State and the provisions of a trackage rights agreement between BNSF and DM&E concerning interchange arrangements at Aberdeen. The outcome of this litigation and the terms of agreements between BNSF and DM&E will involve this issue. It is inaccurate to suggest any linkage between the litigation regarding the donation agreement and BNSF's pending efforts to exercise its option to acquire the Core Lines.

Finally, I wish to comment on each of the conditions requested:

1. The request for the operator of the former BNSF Britton line (which BNSF donated to the State in 2001) to interchange traffic on BNSF track at Aberdeen is not relevant to BNSF's acquisition of the Core Lines. The Aberdeen interchange is not even located on the Core Lines. Rather, that interchange is a part of the former Milwaukee Road east-west mainline

previously acquired by BNSF. This matter is the subject of separate litigation and will be resolved accordingly.

2. The request for various overhead rights for the operator of the Mitchell-Kadoka line is misleading. For the last several years, the line has been inactive except for service to a single, non-grain customer at Mitchell. The prospects for restoring service on this lengthy line are considered remote, at best. The line is laid predominantly with exceeding light rail (60 lb.), is not capable of safely handling fully loaded covered hopper cars, and has a history of very inefficient operations typified by lengthy cycle times. In short, the commercial necessity for the requested access is unproven and, indeed, the likelihood of restored operations seems to be very much in doubt (assuming the access requested relates solely to traffic generated from this inoperable line.) Granting the requested condition appears unnecessary and ill-advised. Moreover, granting such a condition is contrary to the terms of BNSF's Operating Agreement with the State, in which BNSF was granted all responsibility for freight operations on the Core Lines.

3. The request for overhead trackage rights for the operator of the Canton-Elk Point and Hawarden-Beresford lines is unjustified. BNSF operated these lines until late 1986 when D&I assumed operations pursuant to a voluntary agreement between BNSF and D&I and pursuant to a companion agreement between D&I, the State of South Dakota and the Sioux Valley Regional Railroad Authority. This agreement provides that "All general commodities (carload shipments) excluding all carloads of aggregate, Standard Commodity Code No. 14412, 14919, 14219 and 14413 originating and/or terminating on the Rail Facilities are to be delivered to/received from Burlington Northern Railroad Company…." Thus, this condition would abrogate the terms of that agreement that were negotiated at arm's length. The conclusory

comment that BNSF marketing and operating policies severely restrict the available markets for grain is clearly inconsistent with the traffic growth the line has enjoyed and the views of Core shippers who have indicated in their comments that BNSF service provides them access to all the markets they need.

4. The request for overhead trackage rights on the Core Lines for DM&E suggests that marketing opportunities are being missed. Interestingly, DM&E has failed to identify any of these opportunities in the many meetings DM&E and BNSF marketing representatives have held over the years. DM&E currently has available and effective access to all major U.S. carriers for all of its originating and terminating traffic in South Dakota. This is clearly a play to enhance DM&E's route structure, and such proposed Core Lines access fails to narrowly tailor and address market access issues as alleged. A windfall grant of a shorter through route through South Dakota unfairly subsidizes DM&E which has stood idly by while BNSF has invested millions into the Core Lines over the course of the past 24 years.

Taken together, these requested trackage rights conditions would impose on the Core Lines an overlapping hodgepodge of operations severely challenging safe, efficient operations. Despite all the investments and improvements BNSF has made over the course of its years of operations, the Core remains unsignaled with few passing sidings. That condition is suitable for highly efficient, high volume unit train operations where few joint carrier operations are in effect. Therefore, coordinating existing BNSF operations with new operations conducted by disparate short line operators with no proven track record on the Core Lines would present a substantial challenge to safety and efficiency.

VERIFICATION

I, Christopher M. Randall, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 24, 2005.

Christopher M. Randall

41055 282nd Street
Parkston, SD 57366

Phone: 800-257-6791
Fax: 605-935-7028

FEB 28 2005
RECEIVED

February 22, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: BNSF Railway Company-Acquisition and Operation-State of South Dakota #34667

Dear Secretary Williams:

I am the President of Dakota Plains Ag Center, LLC, located in Parkston, SD. I am writing to you today in support of BNSF's proposed purchase of the South Dakota Core rail network.

My company is very dependent upon our relationship with the BNSF as a supplier of freight for both shipping and receiving of grain and bulk fertilizer products. We have invested over $13.0 million in our facilities and plan to continue to invest even more, but it is imperative that we have access to quality rail service to support this investment. My greatest fear is that if the BNSF is not allowed to exercise their rights under a contractual agreement with the State of South Dakota, we will begin to see our services curtailed and upgrades eliminated. This will have a devastating effect on our business.

We feel that the purchase of the Core Lines by the BNSF will allow continued upgrades of track and services that will allow us to continue to grow and expand; providing more jobs and greater economic growth for rural South Dakota.

As such, we urge your approval of BNSF's purchase as soon as possible so that we can continue to explore opportunities for growth and expansion in South Dakota. Thank you for taking time to consider my comments and concerns.

Sincerely yours,

Douglas Brown
President/General Manager
Dakota Plains Ag Center, LLC

WEST-CON

101 Rand Street • Holloway, MN 56249 • (320) 394-2171 • 1-800-368-3310

February 24, 2005

MAR 1 2005
RECEIVED

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K. Street, NW
Washington, DC 20423

FD 34667

RE: BNSF Railway Company – Acquisition and Operation – State of South Dakota

Dear Secretary Williams:

I am the General Manager for Western Consolidated Cooperative (West Con), and I am writing in support of BNSF's proposed purchase of the South Dakota Core rail network.

West Con is producer owned and will receive a projected 30 million bushels of grain in 2005 from our producers. We are responsible to find markets throughout the US and other areas of the world. We also retail over 75,000 tons of dry and liquid fertilizer to our producer, owners, and distribute 100,000 tons of dry fertilizer to other retailers.

To do this efficiently, we have had to build 2 – 110 car grain load out facilities and 1 – 65 car fertilizer receiving facility. This could not have happened without the support of the BNSF. Our producer's survival depends upon a reliable rail network in Minnesota and South Dakota and through the country for transportation of grain and fertilizer.

BNSF's purchase will ensure BNSF will continue to be a key part of South Dakota's transportation network. Ownership of the Core lines will ensure BNSF has a continued investment incentive to grow the business on the Core. Healthy sustained investment for the long run is important to West Con because it adds value to the producers.

We believe BNSF's purchase will benefit our company and the shipping community generally, and we urge your prompt approval of BNSF's purchase. Thank you for your considering our comments.

Sincerely,

Dean Isaacson

Dean Isaacson
General Manager

COLUMBIA GRAIN INTERNATIONAL, INC.
COLUMBIA SQUARE, Suite 1200
111 S.W. Columbia Street
Portland, OR 97201-3844 USA

INTERNATIONAL

Main Office
Portland, Oregon
Area Code (503) 224-8624
FAX (503) 241-0296
pdxmerchants@columbiagrain.com

MAR 9, 2005
RECEIVED

March 1, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington DC 20423

Re: ***BNSF Railway Company – Acquisition and Operation – State of South Dakota Finance Docket No. 34667***

Dear Secretary Williams:

I am the president of Columbia Grain, and I am writing in support of BNSF's proposed purchase of the South Dakota Core rail network.

Columbia Grain is a grain export firm based in Portland, Oregon. We exported 3.6 million metric tons wheat in 2004. Our share of U.S. wheat exports is approximately 13 %. In addition, Columbia Grain owns and operates 40 grain elevators in the western US. Most of our rail loading facilities are located on the BNSF. We do have a few facilities located on the Canadian Pacific. Our export facility in Portland unloaded approximately 25,000 railcars in 2004. This facility is jointly served by the BNSF and Union Pacific.

BNSF's purchase will ensure BNSF will continue to be a key part of South Dakota's transportation network. Ownership of the Core lines will ensure BNSF has a continued investment incentive to grow the business on the Core. Healthy sustained investment for the long run is important to Columbia Grain because our business is very dependent on reliable rail service.

We believe BNSF's purchase will benefit our company and the shipping community generally, and we urge your prompt approval of BNSF's purchase. Thank you for considering our comments.

Sincerely,

Thomas J. Hammond
President

CHS

5500 Cenex Drive
Inver Grove Heights, MN
55077

651-355-6000
chsinc.com

March 3, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington DC 20423

Re: *BNSF Railway Company – Acquisition and Operation – State of South Dakota*

Dear Secretary Williams:

This letter is intended to express support for BNSF Railway's proposed purchase of the South Dakota Core rail network by CHS Inc.

CHS Inc., a farmer owned grain and energy cooperative, owns and operates several origin and destinations facilities throughout the United States with rail service provided by BNSF. Specific to the segment of rail line in question, CHS owns and operates grain facilities at Canton, Mitchell, and Worthing, South Dakota. All three capable of loading or receiving BNSF shuttle trains. Over the past several years, CHS Inc. has invested several million dollars of capital at those three facilities in order to more efficiently handle and ship grain via BNSF. That investment was predicated on the transportation service package provided by BNSF as well as BNSF's market access capabilities, both to export and domestic grain markets.

BNSF's purchase of this line segment will ensure CHS Inc. facilities will continue to have efficient and competitive access to those markets via a reliable source of transportation. Continued investment in infrastructure by BNSF is vital to the financial well being of the assets owned by CHS. Ownership of the Core lines encourages BNSF to further invest in the rail infrastructure and provide continued transportation services to a significant grain producing area of South Dakota.

CHS believes BNSF's purchase will benefit our company and the shipping community of South Dakota. CHS urges your approval of BNSF's purchase. CHS Inc. appreciates your consideration of our comments.

Sincerely,

John McEnroe
Senior Vice President
CHS Inc.

Cc: Sarah Bailiff, BNSF
(via fax 817-352-2397)

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913-338-1474
Wats 800-487-1474
Fax 913-338-2999
www.scoular.com

The Scoular Company

March 11, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington DC 20423

Re: *BNSF Railway Company – Acquisition and Operation – State of South Dakota Finance Docket No.: 34667*

Dear Secretary Williams:

I am Chief Executive Officer for The Scoular Company, a North American marketer of Agricultural Products. I am writing in support of BNSF's proposed purchase of the South Dakota Core rail network.

The Scoular Company has a very substantial capital investment in a grain shuttle train loading facility on the Core Line at Alpena, South Dakota. This investment was made because the line provides The Scoular Company with *direct access* to every significant market for the grain products produced in South Dakota and marketed by our company, utilizing a business model that encourages and rewards efficient operational practices. It is our opinion that such practices are the key to the long term sustainability of an economic and effective rail transportation system, not only in South Dakota but in the entire United States. Our company and the agricultural industry depend upon a reliable, efficient and economic rail network in South Dakota and throughout the country, including direct access opportunities such as that which is operated by BNSF over the Core Line.

BNSF's purchase of the Core Line will ensure the continuation of the present direct access opportunity in South Dakota, and that BNSF will continue to be a key part of South Dakota's transportation network. In addition, ownership of the Core Line will ensure BNSF has a continued investment incentive to grow the business on the Core Line. Healthy sustained investment for the long run is important to The Scoular Company and its customers in order to allow continued timely and competitively priced rail transportation service for agricultural products originating in South Dakota.

The Honorable Vernon Williams
March 11, 2005
Page 2

We believe BNSF's purchase will benefit our company and the shipping community nation wide by preserving the present direct access opportunity, and we urge your prompt approval of BNSF's purchase. Thank you for considering our comments.

Sincerely,

Randal L. Linville

Randal L. Linville
President and Chief Executive Officer
The Scoular Company

Cc: Sarah Bailiff, BNSF
(via fax 817-352-2397)

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2005, a true and correct copy of the foregoing Reply to Comments and Request for Conditions was served by first-class mail, postage prepaid, or by a more expeditious manner, on the following persons required by 49 C.F.R. § 1150.10(e):

The Hon. M. Michael Rounds, Governor
State of South Dakota
500 E. Capitol Avenue
Pierre, SD 57501

The Hon. Dennis Landguth
Secretary of Transportation
State of South Dakota
700 E. Broadway Avenue
Becker-Hansen Building
Pierre, SD 57501

Gary Hanson, Chairman
Public Utilities Commission
Capitol Building, First Floor
500 E. Capitol Avenue
Pierre, SD 57501

Mark F. Wandro, Director
State of Iowa
Department of Transportation
800 Lincoln Way
Ames, IA 50010

The Hon. Thomas Vilsack, Governor
State of Iowa
State Capitol Building
Des Moines, IA 50319

Diane Munns, Chairperson
State of Iowa
Utilities Board
350 Maple Street
Des Moines, IA 50319

and on the following:

Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
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Chicago IL 60606-2875

Gordon P. MacDougall
1025 Connecticut Avenue N.W.
Suite 410
Washington, DC 20036-5405